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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

LARON DESHONE BUNDLEY,

Defendant and Appellant.

2d Crim. No. B292117
(Super. Ct. No. 2015040129)
(Ventura County)

Leron Deshone Bundley pled guilty to one count of conspiracy to commit identity theft (Pen. Code,¹ § 182, subd. (a)(1)), and 14 counts of identity theft (§ 530.5). He also admitted a prior conviction for identity theft. Pursuant to his plea agreement he was sentenced to six years in state prison, ordered to pay restitution, and waived his right to appeal.

Bundley now purports to appeal from the trial court's order denying his postjudgment motion for the return of property seized from his residence pursuant to a search warrant. The

¹ All statutory references are to the Penal Code.

motion was captioned as a motion to suppress and cited to sections 1538.5 and 1540.² No motion to suppress or for the return of property was brought prior to judgment. Because the challenged order is not appealable, we dismiss the appeal.

FACTS AND PROCEDURAL HISTORY

In December 2016, Bundley was charged with conspiracy to commit identity theft, 22 counts of identity theft, one count of money laundering (§ 186.10, subd. (a)), and two counts of commercial burglary (§ 459). It was also alleged that the charged offenses involved fraud and a pattern of related felony conduct in which more than \$100,000 was taken (§ 186.11, subd. (a)(1)), that Bundley took property worth more than \$200,000 (former § 12022.6, subds. (a)(2), (b)), and that he had served a prison term for a prior conviction of identity theft (§ 667.5, subd. (b)).

Bundley subsequently pled guilty to the conspiracy charge and 14 counts of identity theft and admitted all of the enhancement allegations. In accordance with his plea agreement, he was sentenced to six years in state prison and waived his right to appeal.

² Section 1538.5 provides in relevant part that “[a] defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure” where “[t]he property or evidence obtained is not that described in the warrant” or “[t]here was not probable cause for the issuance of the warrant.” (§ 1538.5, subd. (a)(1)(B)(i) & (ii).) Section 1540 provides that “[i]f it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.”

Over two months after judgment was entered, Bundley filed a motion seeking the return of property seized from his residence in the execution of the search warrant. He purported to bring the motion pursuant to sections 1538.5 and 1540. The People opposed the motion and the court denied it. The court found that Bundley's request for relief under section 1538.5 was untimely and added that it "has before it evidence of a sophisticated crime or series of crimes, a criminal enterprise, which . . . appears to involve ill-gotten goods. The Court is declining respectfully to order the return [of the seized property], absent any proof by Mr. Bundley that can establish or substantiate that he has a right to those items."

DISCUSSION

Bundley contends the trial court erred in denying his postjudgment motion for the return of property. The People respond that the challenged order is not appealable, and we agree.³

"Although the trial court has the inherent authority to entertain [a] motion for return of property seized under color of law, the right to appeal is wholly statutory and a judgment or order is not appealable unless it is expressly made so by statute." (*People v. Hopkins* (2009) 171 Cal.App.4th 305, 308 (*Hopkins*); *People v. Mazurette* (2001) 24 Cal.4th 789, 792.) Bundley contends the challenged order is appealable as an "order made after judgment, affecting the substantial rights of the party." (§ 1237, subd. (b).) Well-established authority makes clear,

³ In addition to raising the appealability issue in their respondent's brief, the People filed a motion to dismiss the appeal. In light of our disposition, we deny the motion as moot in a separate order.

however, that a motion for return of property under section 1540 is not an appealable order. (*People v. Gershenhorn* (1964) 225 Cal.App.2d 122, 125-126 (*Gershenhorn*); *Hopkins, supra*, 171 Cal.App.4th at p. 308; see also *Gray v. Superior Court* (2016) 247 Cal.App.4th 1159, 1165 “[C]ourts generally do not find a defendant’s substantial rights are implicated when a postjudgment motion order merely deprives the defendant of personal property”].)

Bundley’s attempts to distinguish or refute this authority are unavailing. To the extent he contends his motion should have been construed as invoking section 1536⁴ in addition to section 1540, it is equally well-settled that an order denying relief under section 1536 is not appealable. (See, e.g., *Ensoniq Corp. v. Superior Court* (1998) 65 Cal.App.4th 1537, 1546.)

The proper avenue of redress for the denial of a postjudgment motion for the return of property is by petition for a writ of mandate, not an appeal. (See *Gershenhorn, supra*, 225 Cal.App.2d at p. 126; *People v. \$25,000 U.S. Currency* (2005) 131 Cal.App.4th 127, 132; *Hopkins, supra*, 171 Cal.App.4th at p. 309; *Williams v. Justice Court* (1964) 230 Cal.App.2d 87, 98.)⁵

⁴ Section 1536 provides: “All property or things taken on a warrant must be retained by the officer in his custody, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense in respect to which the property or things taken is triable.”

⁵ Alternatively, the individual may seek return of his or her property in a civil action for recovery of property with an attendant right to appeal from any adverse civil judgment. (*Gershenhorn, supra*, 225 Cal.App.2d at p. 126; see also, e.g., *Minsky v. City of Los Angeles* (1974) 11 Cal.3d 113, 123.)

Anticipating our conclusion that the challenged order is not appealable, Bundley urges us to exercise our discretion treat his appeal as a writ petition. We may only exercise such discretion, however, “(1) under unusual circumstances, and (2) where doing so would serve the interests of justice and judicial economy.” (*Mon Chong Loong Trading Corp. v. Superior Court* (2013) 218 Cal.App.4th 87, 92.) Bundley does not allege, much less demonstrate, that the requisite unusual circumstances are present here.

DISPOSITION

The appeal is dismissed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Michael Lief, Judge
Superior Court County of Ventura

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